

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICHAEL RAY EVANS,)	CASE NO. C05-1770-MJP-MAT
)	
Petitioner,)	
)	
v.)	ORDER TO SHOW CAUSE
)	
SANDRA CARTER,)	
)	
Respondent.)	
_____)	

Petitioner has filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254. Respondent has filed a motion to dismiss, raising several procedural bars to the court's consideration of the petition. Petitioner has filed a response to the motion to dismiss, to which he has attached two exhibits revealing that petitioner has already had one habeas petition adjudicated by the court. Petitioner's prior habeas petition was denied by the Honorable Franklin D. Burgess on June 19, 1998. (*See* Doc. #15 in *Evans v. Ducharme*, Case No. C97-5483FDB).

Congress has limited habeas petitioners in general to one petition and has established strict rules governing second or successive petitions: "A claim presented in a second or successive habeas corpus application under section 2254 that was presented in a prior application *shall* be

01 dismissed.” 28 U.S.C. § 2244(b)(1) (emphasis added). A claim presented in a second or
02 successive habeas corpus application that was *not* presented in a prior application shall be
03 dismissed *unless* the claim is based on a new rule of law that applies retroactively or the petition
04 is based on facts that could not have been discovered earlier. *See* 28 U.S.C. § 2244(b)(2). Before
05 filing a second or successive petition in the district court, a habeas petitioner must first seek
06 authorization from the appropriate circuit court of appeals. *See* 28 U.S.C. § 2244(b)(3)(A).

07 Here, there is nothing in the record to suggest that petitioner has received permission from
08 the Ninth Circuit Court of Appeals to file a second habeas petition in district court. Accordingly,
09 petitioner is ordered to SHOW CAUSE, no later than **April 28, 2006**, why his petition should not
10 be construed as a motion for authorization to file a second petition and transferred to the Ninth
11 Circuit Court of Appeals for consideration. *See* Circuit Rule 22-3. Failure to file a timely or
12 adequate response to this Order will result in the court transferring petitioner’s petition to the
13 Ninth Circuit. Respondent shall file a reply to petitioner’s response no later than one week after
14 receipt of petitioner’s response.

15 The Clerk shall RENOTE petitioner’s habeas petition for consideration on **May 12, 2006**.
16 The Clerk shall also send copies of this Order to petitioner, to counsel for respondent, and to the
17 Hon. Marsha J. Pechman.

18 DATED this 13th day of April, 2005.

19 
20 Mary Alice Theiler
21 United States Magistrate Judge
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